

Writer's Direct Dial: (501) 324-8671

December 14, 1998

William Jackson Butt, II

DAVIS, COX & WRIGHT PLC

P. O. Drawer 1688

Fayetteville, Arkansas 72702-1688

**Re: Request for Interpretive Opinion**

**No. 98-015**

Dear Mr. Butt:

The staff of the Arkansas Securities Department has reviewed your letter of December 8, 1998, wherein you request the staff to offer its interpretation of the word "person" as that term is used in Rule 504.01(A)(12)(a) of the Rules of the Arkansas Securities Commissioner. You state that you represent persons interested in pursuing an investment in Dixie Crossroads, LLC, a chartered but yet to be organized Arkansas limited liability company, and that, those persons wish to proceed under the exemption provided at Rule 504.01(A)(12)(a). Rule 504.01 (A)(12)(a) allows for an exemption from registration where, among other things, "seven or fewer persons form, incorporate or each otherwise organize a corporation, joint venture, limited liability company, limited liability partnership, or general or limited partnership . . ."

You describe the persons/investors in the proposed Dixie Crossroads, LLC, to consist of the following:

- 1) An Arkansas limited partnership (itself owned by four individuals, two general partners and two limited partners);
- 2) A revocable living trust of which a husband and wife are the sole grantors and beneficiaries;
- 3) An Arkansas general partnership comprised of two individuals as its general partners;
- 4) A limited liability company the membership of which is comprised of two trusts and three individuals;
- 5) An individual person;
- 6) A married couple; and
- 7) Another married couple.

It is your opinion that the word "person," as used in Rule 504.01(A)(12)(a), includes: "limited liability companies, trusts and partnerships, regardless of the number of members that such entity itself may

have." You base your opinion on Ark. Code Ann. ' 23-42-102(11) which defines "person", for purposes of the Arkansas Securities Act, to mean:

". . . an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government."

In addition, Rule 102.01(25) provides that for the purpose of computing the number of purchasers, offerees, investors, or subscribers, a husband and wife who purchase or contemplate purchasing in the joint names of both spouses shall be deemed to be one offer or sale.

The staff agrees with your interpretation of "person" for purposes of Rule 504.01(A)(12)(a) as it applies to the situation described in your letter with regard to Dixie Crossroads, LLC. Please note, however, that Rule 504.01(A)(12)(a) has particular criteria that must be met in order for the exemption to be available to any transaction. Because your request is limited to the definition of "person" under Rule 504.01(A)(12)(a), and does not address the remaining criteria set forth in Rule 504(A)(12)(a), this letter does not express any opinion as to the availability of Rule 504.01(A)(12)(a) to the Dixie Crossroads, LLC transaction.

Should you have any questions regarding this letter, please contact the undersigned at the direct dial number listed above.

Sincerely,

BRUCE H. BOKONY

Chief Counsel